

In re National Prescription Opiate Litigation: MDL 2804 (Track 1B Cases)

PLAINTIFFS' OMNIBUS MOTION IN LIMINE AND MOTION TO MODIFY PRIOR EVIDENTIARY RULINGS AND MEMORANDUM IN SUPPORT

Summary Sheet of Concise Issues Raised

Motion Name: Plaintiffs' Omnibus Motion *in Limine* and Motion To Modify Prior Evidentiary Rulings and Memorandum in Support

Moving Parties: Plaintiffs Summit County and Cuyahoga County

Exhibits:

Exhibit A – Excerpts from Plaintiffs' Track 1A Omnibus Motion *in Limine* and Memorandum in Support, dated Sept. 25, 2019 (Doc. #2652).

Exhibit B – Excerpts from Plaintiffs' Track 1A Reply in Support of Plaintiffs' Omnibus Motion *in Limine* and Memorandum in Support, dated Oct. 14, 2019 (Doc. #2805).

Concise Description of Requested Relief:

- **Plaintiffs seek to modify the rulings contained in the Court's January 3, 2020 Evidentiary Order, Doc. #3058 ("Evidentiary Order"), on the following MILs because there are particular circumstances in Track 1B that warrant revision:**

Plaintiffs' MIL No. 5 (references to the accommodations of, or the use of private aircraft for transportation by, any witnesses, parties, or counsel). *See* Doc. #3058 (*Evidentiary Order*) at pp. 57-58; **Ex. A** (Ps' CT1A MILs) at pp. 3-4; **Ex. B** (Ps' CT1A MIL Reply) at pp. 3-5.

Plaintiffs' MIL No. 23 (argument that "learned intermediary" doctrine limits or absolves any Defendant's liability). *See* Doc. #3058 (*Evidentiary Order*) at pp. 45-46; **Ex. A** (Ps' CT1A MILs) at pp. 27-28; **Ex. B** (Ps' CT1A MIL Reply) at pp. 29-30.

Plaintiffs' MIL No. 24 (evidence or argument that Plaintiffs failed to mitigate damages). *See* Doc. #3058 (*Evidentiary Order*) at pp. 46-47; **Ex. A** (Ps' CT1A MILs) at pp. 29-31; **Ex. B** (Ps' CT1A MIL Reply) at pp. 30-33.

Plaintiffs' MIL No. 28 (references to deaths of individuals while in custody of Cuyahoga County Jail or Sheriff's Office, and any reference to U.S. Marshals Service's report on jails). *See* Doc. #3058 (*Evidentiary Order*) at p. 71; **Ex. A** (Ps' CT1A MILs) at p. 36; **Ex. B** (Ps' CT1A MIL Reply) at pp. 35-38.

Plaintiffs' MIL No. 29 (references or allegations regarding current or former government corruption in Cuyahoga County). *See* Doc. #3058 (*Evidentiary Order*) at p. 72; **Ex. A** (Ps' CT1A MILs) at pp. 36-37; **Ex. B** (Ps' CT1A MIL Reply) at pp. 35-38.

Plaintiffs' MIL No. 30 (references to grand jury proceedings involving Cuyahoga County). *See* Doc. #3058 (*Evidentiary Order*) at p. 17; **Ex. A** (Ps' CT1A MILs) at p. 37; **Ex. B** (Ps' CT1A MIL Reply) at pp. 35-38.

Plaintiffs' MIL No. 31 (references to recent investigations or subpoenas involving Cuyahoga County). *See* Doc. #3058 (*Evidentiary Order*) at pp. 17-18; **Ex. A** (Ps' CT1A MILs) at p. 37; **Ex. B** (Ps' CT1A MIL Reply) at pp. 36-38.

Plaintiffs' MIL No. 32 (references to indictment of Ken Mills, former Director of Cuyahoga County Jails). *See* Doc. #3058 (*Evidentiary Order*) at p. 18; **Ex. A** (Ps' CT1A MILs) at p. 38; **Ex. B** (Ps' CT1A MIL Reply) at pp. 36-38.

Plaintiffs' MIL No. 33 (references to investigations of former Cuyahoga County Sheriff Pinkney or the Cuyahoga County Sheriff's Office). *See* Doc. #3058 (*Evidentiary Order*) at p. 18; **Ex. A** (Ps' CT1A MILs) at p. 38; **Ex. B** (Ps' CT1A MIL Reply) at pp. 36-38.

Plaintiffs' MIL No. 34 (references to any "podcast" or other media coverage regarding the Cuyahoga County Courts). *See* Doc. #3058 (*Evidentiary Order*) at p. 73; **Ex. A** (Ps' CT1A MILs) at pp. 38-39; **Ex. B** (Ps' CT1A MIL Reply) at pp. 38-40.

Plaintiffs' MIL No. 35 (references to any investigation regarding the death of Aniya Day Garrett). *See* Doc. #3058 (*Evidentiary Order*) at p. 39; **Ex. A** (Ps' CT1A MILs) at pp. 73-74; **Ex. B** (Ps' CT1A MIL Reply) at pp. 40-41.

Plaintiffs' MIL No. 36 (references or allegations regarding current or former government corruption in Summit County). *See* Doc. #3058 (*Evidentiary Order*) at p. 72; **Ex. A** (Ps' CT1A MILs) at pp. 39-40; **Ex. B** (Ps' CT1A MIL Reply) at pp. 41-42.

Plaintiffs' MIL No. 37 (references to deaths of individuals while in the custody of the Summit County Jail or Sheriff's Office). *See* Doc. #3058 (*Evidentiary Order*) at p. 71; **Ex. A** (Ps' CT1A MILs) at p. 40; **Ex. B** (Ps' CT1A MIL Reply) at pp. 42-43.

- **Plaintiffs submit the following new motions *in limine*:**

Plaintiffs' MIL No. 38 – Any reference to, or evidence of, matters for which Defendants have withheld some or all related discovery.

Plaintiffs' MIL No. 39 – Any evidence to support affirmative defenses or claims that Defendants met all pertinent regulatory requirements and/or that their conduct was based on alleged DEA guidance to the extent related discovery was withheld as privileged.

Plaintiffs' MIL No. 40 – Any reference to, or evidence of, any litigation between Summit or Cuyahoga County and its past or present employees.

Plaintiffs' MIL No. 41 – Any reference to, or evidence of, the firing of any County employee by Summit or Cuyahoga County.

Plaintiffs' MIL No. 42 – Any reference to the efforts or actions of any Defendant, or its affiliates or employees, in connection with COVID-19, or the impact of COVID-19 on any Defendant, or its affiliates or employees.

- **Plaintiffs note for the record their objections to the following rulings contained in the *Evidentiary Order* regarding which they do not believe there are particular circumstances in Track 1B that warrant revision, for the reasons stated in their prior MIL briefing:**

Plaintiffs' MIL Nos. 6-9, 15-17, 22

Defendants' MIL Nos. 1, 4, 14

Distributors' MIL No. D-3

Walgreens' MIL No. W-3

Filing Date: August 14, 2020

Response Date: September 14, 2020

Reply Date: September 28, 2020